



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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In Reply To:

SDR-922-03-01
3160 (922.WL)

July 16, 2003

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

DECISION

Mr. Wayne L. Smith Sr.
K2 America Corp.
P.O. Box 486
Cut Bank, Montana 59427

SDR No 922-03-01

ASSESSMENT VACATED

The K2 America Corp. (K2) requests a State Director Review (SDR) in accordance with 43 CFR 3165.3(b) of the June 6, 2003, written notice of incident of noncompliance and assessment issued by the Great Falls Oil and Gas Field Station (GFFS) Supervisor regarding Facility A, Tesero Cut Bank Sand Unit, NWSW, Sec. 11, T. 32 N. 6 5 W., Glacier County, Montana. The SDR was considered timely filed on July 7, 2003, in accordance with 43 CFR 3165.3(b) and was assigned number SDR-922-03-01.

BACKGROUND

Personnel from the BLM Great Falls Oil and Gas Field Station (GFFS) conducted an inspection of Facility A of the Tesero Cut Bank Sand Unit on March 17, 2003. Oil was found on the pit at the facility, and the pit netting was in the oil and contained holes that did not prevent birds from entering the pit. Two notices of incidents of noncompliance were hand delivered to Mr. Wayne Smith of K2 on March 18, 2003. One notice required that the netting be re-established by March 24, 2003, and the second notice required that the oil be removed from the pit by May 1, 2003. The first notice was returned to the GFFS by K2 stating that new netting had been installed on March 22.

Notes at the GFFS indicate that Mr. Don Judice, GFFS Supervisor, received a call from Wayne Smith of K2 on May 7, 2003, regarding the second notice of incidence of noncompliance. The notes indicate that due to the weather, an extension for removing the oil from the pit was verbally granted until June 1 2003. No formal paper work (i.e., Sundry Notice, letter, etc.) was processed. The notes indicate that Mr. Smith was told to keep in touch in case the weather was uncooperative.

Personnel from the GFFS conducted a follow-up inspection on June 2, 2003. The inspection revealed that the oil was still on the pit, and the new netting was again immersed in the oil. The GFFS issued a written notice of incident of noncompliance and assessment on June 6, 2003. The assessment was issued for failure to timely comply with the original notice requiring the oil be removed from the pit. The notice also required K2 to remove the oil and reinstall the netting within 20 days. K2 received the notice on June 10, 2003.

K2 ARGUMENTS

K2 argues that they have hired Habet's Construction as the contractor for the removal of the oil in the pit. They state that Mr. Habets has been actively working on removing oil from the pit since April 3, 2003. K2 included a letter from Habet's Construction regarding the clean up (Note: the letter from Habet's states that work started April 23, 2003). K2 argues that very poor weather conditions in this area have not allowed Habet's Construction to complete the oil removal. Warm summer days to heat up the oil are needed to enable a vacuum truck to get the oil out of the pit.

K2 argues that Mr. Wayne Smith of K2 contacted the GFFS on May 7, 2003 and talked to Don Judice about the situation and K2's concern that they were being held up by the weather. K2 argues they asked if they should submit a sundry to tell of the delay and were told that the phone call would be sufficient notice and to just keep the BLM apprised of the situation.

In regards to the netting in the pit, K2 explains that the new netting stretched which caused it to sink into the oil and the amount of rainwater caused the level in the pit to rise causing contact with the netting. K2 states that, "The problem was corrected in a very short amount of time and could have been corrected had they been give 20 minutes or less to fix the netting."

DISCUSSION

There appears to be disagreement between K2 and the GFFS on the extension granted to remove oil from the pit. K2 does not disagree that the oil should be removed from the pit. Their argument is with the assessment for failure to comply with the original notice. K2 feels that their phone call of May 7 granted them additional time due to weather conditions. The GFFS notes indicate that additional time was granted, but only until June 1. Unfortunately, there is no formal paperwork documenting a specific date for the extension. Subsequent conversations with the GFFS indicate that the oil has been removed from the pit, and K2 is in compliance with the original requirement.

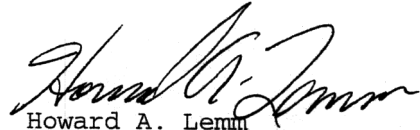
As for the new netting being in the pit, it appears that K2 feels that a written notice was not appropriate. However, the fact remains that the netting was in the oil and, therefore, not in compliance with the conditions of approval. It is the responsibility of the operator to ensure that all of their operations are conducted in accordance with the regulations and any conditions of approval. Since the netting situation has been corrected, no decision is necessary on this issue.

DECISION

The assessment issued by the GFFS is vacated. It is unfortunate that the GFFS and K2 had a different understanding of the conversation regarding an extension of time. However, since no formal paperwork is available to document what was agreed upon, and the personal notes of K2 and the BLM regarding the phone conversation do not agree, the assessment cannot be upheld, and is therefore vacated. The bill for collection of the assessment, Bill Number 2003022369, is cancelled.

Issuance of a notice of incidents of noncompliance by the BLM starts a formal process that requires action within a specific period of time. While dialogue concerning any notices of incidents of noncompliance is encouraged, any

extensions of time for compliance should be documented in writing. This could be in the form of a Sundry Notice or letter from the operator, or a letter from the BLM confirming a conversation. With formal documentation, it is clear to both the BLM and the operator what the agreed upon timeframe is, and disagreements such as the one in this case can be avoided.



Howard A. Lemm
Acting Deputy State Director
Division of Resources

cc:
WO-310, LS, Rm. 501
All BLM State Offices
Great Falls Oil and Gas Field Station
Miles City Field Office
North Dakota Field Office